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STATE FOR EB/MTA/MST AND EAP/ANP
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COMMERCE FOR ABENAIISSA/4530/ITA/MAC/AP/OSAO
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SUBJECT: 2006 NATIONAL TRADE ESTIMATE REPORT: NEW ZEALAND

REF: STATE 193384

¶1. Following is post's input for the 2006 National Trade Estimate Report on New Zealand. We assume that Washington agencies will provide updated trade and investment data.

¶2. We also note that the section on "Biotechnology Food Approval" should be consistent with the NTE on Australia.

¶3. Begin text of NTE submission:

IMPORT POLICIES

In general, tariff rates in New Zealand are low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s and continued until the current Labor government, elected in 1999, froze further reductions until July 2005. The New Zealand government announced in September 2003 that it would resume unilateral tariff reductions starting July 1, 2006. New Zealand plans to begin gradual reductions of its highest tariff rates of between 17 percent and 19 percent, taking them to 10 percent by July 1, 2009. The top rates apply mostly to clothing, footwear, carpets, and certain automobiles and auto parts. Ad valorem tariffs on other goods also will gradually be reduced to 5 percent by July 1, 2008. None of these low tariff rates are bound. The New Zealand government will conduct a review in 2006 to determine rates for the period after July 1, 2009.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Biotechnology Regulations

New Zealand's Environmental Risk Management Authority (ERMA) reviews applications for the release of new organisms, including genetically modified organisms (GMOs), on a case-by-case basis. ERMA, an independent body, can issue three types of approval for the release of new organisms: contained trials, conditional release and full, unconditional release. The agency can approve applications with conditions that aim to prevent, minimize or manage any identified risks. Contained trials are strictly regulated and monitored and can include field trials. A full release is unregulated and has no controls, making it extremely unlikely one would be granted for a GMO. Conditional release fills the gap between these two extremes, providing controls and regulation determined on a case-by-case basis. This allows for specific conditions to be placed on the planting of a crop, which can be any size from a contained trial to a large commercial planting. The Ministry of Agriculture and Forestry (MAF) monitors implementation of such approvals. To date applications have been limited to a small number of contained trials.

Until October 2003, New Zealand maintained a voluntary two-year moratorium on the introduction of all GMOs, which precluded applications for the commercial planting of genetically modified crops, the commercial importation of genetically modified seeds, the release into the environment of genetically modified animals and, to a lesser extent, some human and veterinary medicines containing GMOs. The moratorium, however, did not apply to the use and sale of processed genetically modified foods and ingredients. With the moratorium's expiration, Parliament amended the Hazardous Substances and New Organisms Act 1996 to regulate the introduction of GMOs. The amendment, the New Organisms and Other Matters Bill 2003, introduced the conditional release category for approval of new organisms.

Biotechnology Food Approval

Imported genetically modified foods for sale in New Zealand must be assessed and approved by Food Standards Australia New Zealand (FSANZ), which operates under the authority of the New Zealand Food Safety Authority (NZFSA). A mandatory standard for foods produced using modern biotechnology came into effect in mid-1999. The standard established under the Food Act 1981 prohibits the sale of food produced using gene technology, unless such food has been assessed by FSANZ and listed in the food code standard. As of November 2005, FSANZ had received 34 applications for safety assessments of bioengineered foods. Of these, 28 applications had been approved (including four under review pending additional assessment), four applications were being processed, and two requests had been withdrawn.

Biotechnology Food Labeling

Mandatory labeling requirements for foods produced using gene

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technology took effect in December 2001. With few exceptions, a food in its final form that contains detectable DNA or protein resulting from genetic modification must be so labeled. Meeting New Zealand's biotechnology food labeling regulations can be burdensome and is especially relevant for U.S. agricultural exporters who deal primarily in processed food. New Zealand wholesalers and retailers frequently demand biotechnology-free declarations from their suppliers. This effectively passes liability for any biotechnology labeling non-compliance back to the importer. New Zealand food legislation requires businesses to exercise due diligence in complying with food standards, which usually is defined as maintaining a paper or audit trail similar to a quality assurance system.

The NZFSA conducts periodic compliance audits. Violators of food-labeling requirements can be assessed penalties under the Food Act 1981. The New Zealand government is reviewing penalties stipulated under the act to ensure that they represent an adequate economic deterrent. The effect of these regulations is to discourage New Zealand food retailers from carrying biotechnology food products.

Sanitary and Phytosanitary Measures

New Zealand maintains a strict regimen of sanitary and phytosanitary (SPS) controls for virtually all imported agricultural products. The United States and New Zealand continue to discuss specific SPS issues that negatively impact trade in products supplied by the United States.

Imports of U.S. poultry meat (except canned product) remain suspended due to restrictions on countries that have infectious bursal disease. Imports of U.S. pork meat products are subject to a pre-cooking requirement because of the presence of porcine reproductive and respiratory syndrome in the United States. Imports of California table grapes were restarted in 2005 as a result of changes in import requirements, while market access also was achieved for cherries from Idaho, Oregon and Washington.

U.S. beef and beef variety meats were restricted from entering

New Zealand following the December 2003 announcement of bovine spongiform encephalopathy (BSE) in the United States. Import restrictions also were imposed on live cattle, certain pet food and U.S. processed food products containing beef. The NZFSA had required case-by-case assessment of U.S. bovine products before importation. However, after completing an assessment of the U.S. BSE regime, NZFSA decided to lift that restriction once both sides agree on certification that must accompany meat imports. MAF is conducting a review that may result in resumption of live cattle trade.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The New Zealand government has proposed amendments to strengthen its copyright and patent laws and enhance the country's protection of intellectual property rights. With proposed amendments to the Copyright Act 1994, the government aims to address developments in digital technologies and international developments in copyright law and to bring New Zealand law into closer conformity with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The amendments are expected to be reviewed and approved by Cabinet before they are introduced in Parliament in 2006. If this legislation is enacted, the New Zealand government then will determine whether to accede to the WCT and WPPT treaties.

The Ministry of Economic Development in December 2004 released draft legislation that is intended to replace the Patents Act 1953 and to bring New Zealand's patent law into closer conformity with international standards. This draft would keep the maximum patent term at 20 years, but would tighten the criteria for granting a patent, from a patentable invention being new in New Zealand, to being new anywhere in the world and involving an inventive step. At year's end, the legislation had not yet been introduced in Parliament.

The U.S. music industry opposes a proposed amendment to the Copyright Act that would legalize the duplication of sound recordings in other formats for a purchaser's private use. The government says this would enable consumers to employ new digital technologies and would legalize what already is common practice. The government also notes the amendment would limit copying to one copy per format, specify that the original sound recording must be legitimate, and exclude making copies from borrowed or rented recordings. The music industry warns that such an

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exception to copyright protection would make copyright infringement difficult to police, send the wrong message to consumers and cost the industry in sales revenue and profits. The industry says that the exception would discourage the development of music products that would permit home copying under contractual arrangements between the consumer and the provider. The industry and government continue to discuss this exception.

Additionally, the industry favors a wider approach to technological protection measures (TPMs) than that provided in the government's proposed amendments. The government's proposal would prohibit the supply of devices or the means or information to circumvent TPMs that would result in infringing any of a copyright owner's exclusive rights, and not just copying as now specified in the legislation. The industry says the act of circumventing a TPM also should be illegal. It also wants protection against the circumvention of TPMs that control access to copyright material, in addition to TPMs that control copying.

U.S. industry also has expressed concern over a proposed exception to the Copyright Act that would allow the unauthorized time-shifting of virtually all works communicated to the public. The industry warns that the exception would discourage rights holders from developing new approaches to meeting consumer demand for electronically delivered materials and reduce access and choice for New Zealand consumers to these materials.

In the draft patents legislation, a prohibition of patents for

methods of medical treatment concerns some pharmaceutical companies. The industry also is concerned by the Cabinet's decision in mid-2004 to halt a study on the economic impact of extending patent terms for pharmaceuticals. The draft patents bill fails to address the issue of patent terms. The pharmaceutical industry group, Researched Medicines Industry Association of New Zealand, contends that New Zealand's effective patent life for pharmaceuticals has been substantially eroded. It asserts that extending the effective patent term would be in line with international best practices.

The pharmaceutical industry also is concerned by an amendment, enacted in December 2002, to the Patents Act 1953. This amendment states that it is not a patent infringement for a person to make, use, exercise or vend an invention for purposes related to gaining regulatory approval in New Zealand or other countries. This provision can be used to effectively expedite, or "springboard," the approval process for generic competition to products going off patent. The pharmaceutical industry strongly opposes this legislation.

Some U.S. industries, particularly producers and distributors of music and software, have voiced concerns about New Zealand law that allows parallel imports of certain copyrighted goods, saying such imports make it more difficult to detect and combat piracy and erode the value of their products in New Zealand and third-country markets. The New Zealand Parliament in October 2003 enacted a ban on the parallel importation of films, videos and DVDs for the initial nine months after a film's international release, but the ban does not apply to parallel importation of music, software and books. The ban is scheduled to sunset in 2008, unless extended.

The October 2003 legislation, which amended the Copyright Act 1994, makes it easier to challenge copyright violations in court by shifting the burden of proof in certain copyright infringement cases to the defendant, who must prove that an imported film, sound recording or computer software is not a pirated copy.

The United States continues to monitor developments in IPR issues closely.

SERVICES BARRIERS

Local Content Quotas

Radio and television broadcasters have adopted voluntary local content targets, but only after the New Zealand government made it clear that it would otherwise pursue mandatory quotas. Although New Zealand government officials have said they are sensitive to the implications of quotas under the WTO General Agreement on Trade in Services (GATS), they reserve the right to impose them.

Telecommunications

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U.S. industry has expressed concern about the fees charged for completing calls onto mobile networks in New Zealand, which are among the highest in the world. After a year-long investigation into mobile termination rates, the New Zealand regulating authority said in June 2005 that mobile network operators had been able to set unreasonably high rates because of limited market competition. The authority called for such charges to be regulated. The Communications Minister in August 2005 agreed with the authority's position that the termination rates should come down, but asked the authority to reconsider its recommendations by examining several issues, including commercial offers by New Zealand's two mobile-phone service providers for rate reductions and how best to ensure that end users benefit from reductions in wholesale rates. The authority was expected to release a draft report soon.

Competitors of the formerly state-owned monopoly, Telecom, were disappointed by the New Zealand government's decision in May 2004

against unbundling the local loop. Although under competitive pressure, Telecom still dominates the market. The Communications Minister accepted the regulator's recommendation against ordering Telecom to open its national fixed-line network to competitors. Saying he aimed to increase competition in broadband services, the Minister also agreed with the regulator's recommendation to require bitstream unbundling, or access to Telecom's equipment by service providers in order to sell their own broadband services. TelstraClear, Telecom's primary land-line competitor, in November 2004 asked the regulator to determine the terms and conditions for access to Telecom's unbundled bitstream service. The regulator made that determination December 20, although Telecom was considering a court appeal.

INVESTMENT BARRIERS

Investment Screening

New Zealand screens certain types of foreign investment through the Overseas Investment Office (OIO). Amid growing public concern about purchases of coastal properties by foreigners, the New Zealand government enacted legislation in August 2005 that toughened the screening and monitoring of land purchases, but raised the minimum threshold for scrutiny of proposed business purchases. Under the legislation, the threshold for screening non-land business assets has been increased from NZ \$50 million to NZ \$100 million, where a foreigner proposes to take ownership or control of 25 percent or more of a business. Government approval is required for purchases of land larger than 5 hectares (12.35 acres) and land in certain sensitive or protected areas. Any application involving land in any form must meet a national interest test. For land purchases, foreigners who do not intend to live in New Zealand must provide a management proposal covering any historic, heritage, conservation or public access matters and any economic development planned. That proposal would have to be approved and generally made a condition of consent. In addition, investors would be required to report regularly on their compliance with the terms of the consent. Overseas persons also must demonstrate the necessary experience to manage the investment. The OIO, part of Land Information New Zealand, took over the functions of the Overseas Investment Commission in August 2005. The United States has raised concerns about the continued use of this screening mechanism. New Zealand's commitments under the GATS Agreement of the WTO are limited as a result of New Zealand's screening program.

OTHER BARRIERS

Pharmaceuticals

The U.S. government continued to raise concerns about New Zealand's pharmaceutical sector policies, which do not appropriately value innovation and discourage investment in the research and development of innovative pharmaceutical products. New Zealand's Pharmaceutical Management Agency (PHARMAC), a stand-alone Crown entity, administers a Pharmaceutical Schedule that lists medicines subsidized by the New Zealand government and the reimbursement paid for each pharmaceutical under the national health care system. The schedule also specifies conditions for prescribing a product listed for reimbursement. PHARMAC accounts for 73 percent of New Zealand's expenditures on prescription drugs. The government also supports hospitals' pharmaceutical expenditures, bringing its share of total spending on prescription drugs in the country to about 80 percent.

New Zealand does not directly restrict the sale of non-subsidized pharmaceuticals in the country. However, private medical

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insurance companies will not cover the cost of non-subsidized medicines and doctors are often reluctant to prescribe them to patients who would have to pay the cost out of pocket. Thus, PHARMAC's decisions have a major impact on the availability and price of non-subsidized medicines and the ability of pharmaceutical companies to sell their products in the New Zealand market.

The United States has serious concerns relating to the transparency, predictability and accountability of PHARMAC's operations. U.S. pharmaceutical suppliers maintain that the methodology used to determine Pharmaceutical Schedule decisions lacks transparency. Meanwhile, PHARMAC is reviewing the way it decides funding for high-cost medicines. And, the Labour Party, in an agreement to form a new government in October 2005 with support from the United Future party, assented to a review of the nation's long-term medicines strategy, including PHARMAC's role. The U.S. government will continue to closely monitor developments in this sector.

The New Zealand and Australian governments signed a treaty on December 10, 2003, to create a joint agency to regulate medical devices, prescription and over-the-counter medicines, dietary and nutritional supplements, and cosmetics such as sun creams. Aside from prescription pharmaceuticals, New Zealand does not currently regulate market entry of these products. Both governments must enact implementing legislation, which probably will not be introduced in their Parliaments until at least mid-2006. It is expected that the new agency will charge full cost-recovery fees to register products and require additional documentation and assessments for certain products, even if they already have U.S. Food and Drug Administration approval. Each country's government will continue to separately determine funding of prescription medicines. U.S. manufacturers and distributors of non-pharmaceutical therapeutic products in New Zealand have expressed concerns that those requirements would be overly burdensome and costly, and could serve to discourage exports of their products from the United States to New Zealand.

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